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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,514	01/26/2004	Richard T. Miller	492.342	1038
27023	7590	06/02/2006	EXAMINER	
<b>THE GLAD PRODUCTS COMPANY</b> 1221 BROADWAY #2344 OAKLAND, CA 94623-1305				HYLTON, ROBIN ANNETTE
		ART UNIT		PAPER NUMBER
				3727

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

8P

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/765,514	MILLER ET AL.	
	Examiner Robin A. Hylton	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for R plly

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 28 and 29 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-27 and 30 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3-4-04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-27 and 30, drawn to a valve and a package with a valve, classified in class 383, subclass 103.
  - II. Claims 28 and 29, drawn to a method of use including filling the package, classified in class 141, subclass 18+.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Group I and Group II are related as process of making and product made.

The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the packaging can be filled and fluid expelled by manipulating the valve without manipulating the packaging enclosure.

3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Thomas Feix on May 26, 2006 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-27 and 30.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 28 and 29 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the

currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claim 30 is rejected under 35 U.S.C. 102(b) as being anticipated by Winstead (US 2,604,297). Disclosed are first sidewall **3**, second sidewall **2**, opening **5**, and valve element **8**. See figures 1 and 2 depicting the raised portion.

8. Claim 30 is rejected under 35 U.S.C. 102(b) as being anticipated by Ogura et al. (US 5,513,659). Disclosed are first sidewall **2**, second sidewall **3**, opening **5**, and valve element **6**. See figures 2A and 2B depicting the raised portion.

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9. Claims 1,3-9,16,17,19,21,22,24-27 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Chemberlen (US 5,584,409). It is to be noted that figure 9 shows a dome shape and a central apex.

10. Claims 1,6-8, and 16 rejected under 35 U.S.C. 102(e) as being anticipated by Clougherty et al. (US 6,662,827). Disclosed are valve element 10 comprising a membrane including a border 32 and a raised portion 20 moveable between a first obstructing position and a second non-obstructing position and a base element 38 including a border and aperture (unnumbered).

#### ***Claim Rejections - 35 USC § 103***

11. Claims 17,19, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clougherty.

Clougherty is silent regarding the packaging structure.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the packaging of two attached sidewalls since the examiner takes Official Notice of the equivalence of packages having two attached sidewalls, two sidewalls attached via side wall inserts, and sidewalls formed of a single folded sheet for their use in the bag art and the selection of any of these known equivalents to form a valved packaging would be within the level of ordinary skill in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the packaging of Clougherty of two attached side walls, since applicant has not disclosed that having two attached side walls of the packaging solves any stated problem or is for any particular purpose.

12. Claims 1-27 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogura in view of Domke (US 5,326,176).

Ogura teaches a valve element comprising a membrane having a domed central portion which has a first position to obstruct fluid communication through an aperture and a second position to allow fluid communication through the aperture. Ogura teaches at column 9, lines 61-62 that a peeling assistant part is not necessary to the invention disclosed therein. Ogura is silent regarding a base element, including a seat portion and an aperture, attached to a border of the membrane.

Domke teaches a valve element for selectively facilitating fluid communication wherein the valve element either includes or does not include a base element attached to a border of the membrane, the base element including a seat portion and an aperture.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a base element to the valve of Ogura. Doing so is a known alternative valve structure that will also allow for selective facilitating fluid communication therethrough and will maintain the valve on the packaging without worry of inadvertent complete or partial removal of the valve.

### ***Conclusion***

13. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear issue requires that the replies of the applicant meet the objections to

and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

15. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

16. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH  
May 26, 2006



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GAU 3727